

Joint occupation, non-dependents + mortgage interest

ATH/SH/5

Commissioner's File: CIS/403/1990

SOCIAL SECURITY ACT 1986

APPEAL FROM DECISION OF SOCIAL SECURITY APPEAL TRIBUNAL ON A
QUESTION OF LAW

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: Thomas Birtles

Social Security Appeal Tribunal: Ashton under Lyne

Case No: 621:03394

1. I allow this appeal by the claimant. The decision of the social security appeal tribunal dated 10 May 1990 was erroneous in law and I set it aside. I substitute my own decision under Section 101(5)(a)(i) of the Social Security Act 1975. My decision is that the claimant's housing costs were not subject to deductions in respect of the claimant's son and the claimant's father in law from the date of the claimant's claim for income support to 9 October 1989.

2. The claimant and his wife live in a house of which they own the leasehold subject to a mortgage in their joint names. Also living in the house are their son, aged 24 and self-employed, and the claimant's wife's father, aged 85, who is in receipt of retirement pension and attendance allowance. The claimant claimed income support for mortgage interest as a housing cost. By a decision issued on 19 January 1989 the adjudication officer decided that the claimant's housing costs were subject to non-dependant deductions in respect of the claimant's son and the claimant's father-in-law. The claimant appealed. On 10 May 1990 the social security appeal tribunal refused the appeal. The claimant appeals with leave of another Commissioner.

3. The law

Regulation 17(e) of the Income Support (General) Regulations provides that a claimant's "weekly applicable amount" shall include:-

"(e) any amounts determined in accordance with Schedule 3 (housing costs) which may be applicable to him in respect of mortgage interest payments or such other housing costs as are prescribed in that Schedule."

Schedule 3 sets out in paragraph 1 the categories of eligible housing costs but they are "Subject to the following provisions of the Schedule". For the purpose of the present case the relevant paragraph of Schedule 3 is paragraph 11(1) which provides that "deductions from the amount to be met under the preceding paragraphs of this Schedule in respect of housing costs" shall be made "in respect of a non-dependant aged 18 or over". The amount of the deduction depends upon whether the "non-dependant" is in remunerative work or not. The definition of "non-dependant" is to be found in regulation 3 of the General Regulations. That regulation, so far as is relevant, provided at the material time:-

" 3. (1) In these Regulations, 'non-dependant' means any person, except someone to whom paragraph (2) applies, who normally resides with a claimant.

(2) This paragraph applies to -

(a) [not relevant];

(b) [not relevant];

(c) a person who jointly occupies the claimant's dwelling;

(d) [not relevant];

(e) [not relevant];"

4. The question at issue in the present case was whether or not the claimant's son and the claimant's father-in-law were "non-dependants". That question depended upon the meaning of the words "a person who jointly occupies the claimant's dwelling" in regulation 3(2)(c). The adjudication officer's decision was that the claimant's housing costs were subject to "non-dependant deductions" in respect of the claimant's son and the claimant's father-in-law. In their reasons for their decision in Form AT3, box 4 the appeal tribunal stated:-

"[The claimant's father-in-law] and [the claimant's son] normally reside with [the claimant] and are non-dependants therefore deductions properly made - regulation 3 of General Regulations."

5. Regulation 3(2)(c) was amended with effect from 9 October 1989 so that it now reads:-

" (c) A person who jointly occupies the claimant's dwelling and either is a co-owner of that dwelling with the claimant or his partner (whether or not there are other co-owners) or is liable with the claimant or his partner to make payments in respect of his occupation of the dwelling."

For the purposes of the present case, however, the appeal

tribunal had to consider regulation 3(2)(c) in its original form, namely "a person who jointly occupies the claimant's dwelling". Those words were considered by a Commissioner in CIS/180/1989. In paragraph 4 of that decision the Commissioner said:-

"... In my view 'jointly occupies the claimant's dwelling' does not have a technical meaning, if only because it is impossible to say with accuracy what such a meaning would be. And, while I can see the difficulty of giving an ordinary natural meaning to words which are hardly in ordinary every day use, on balance I think it is right to give the words 'jointly occupies the claimant's dwelling' their most straight-forward meaning and say that the provision applies if in fact the persons in question who normally reside together jointly occupy the premises in the sense of equality of access and use as distinct from a situation where restrictions are imposed in relation to those matters ..."

Applying that decision to the present case, it is clear that the claimant's son and the claimant's father in law were jointly occupying the claimant's dwelling. It follows that the son and the father-in-law were not "non-dependants" prior to 9 October 1989 (the date of the amendment to regulation 3(2)(c)) and therefore no deduction should be made from the claimant's housing costs in respect of them up to that date.

6. In paragraph 5 of his written submission dated 11 December 1990 the adjudication officer has submitted:-

"Therefore in my submission there is nothing to restrict another appeal tribunal, should the Commissioner decide to remit the appeal to them, from deciding in accordance with CIS/180/1989 from the first day income support was claimed for, and up to 9.10.89."

That being so, since I do not have to make any fresh or further findings of fact, I can give the decision which I consider the tribunal should have given: section 101(5)(a)(i) of the Social Security Act 1975. My decision is as set out in paragraph 1 above.

7. For those reasons I allow this appeal.

(Signed) A T Hoolahan
Commissioner

(Date) 1 February 1991